IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4404 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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R T JANJVADIA - Petitioner(s)

Versus

STATE BANK OF SAURASHTRA & 1 - Respondent(s)

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Appearance :

MR IS SUPEHIA for Petitioner(s) : 1,

MR SANDEEP N BHATT for Respondent(s) : 1,

MR SAMIR J DAVE for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 12/06/2006

ORAL JUDGMENT

Heard learned advocate Mr. I.S. Supehia for petitioner, learned advocate Mr.Sandeep Bhatt for respondent NO. 1 and Mr. Sameer J. Dave for respondent NO. 2.

Rule. Service of rule is waived by the learned advocate Mr. Sandeep Bhatt on behalf of respondent No.1 and Mr. Sameer Dave on behalf of respondent NO. 2. In the peculiar facts and circumstances of the case and with the consent of the learned advocates for the parties, this matter is taken up for final hearing today.

In this petition, petitioner **R T JANJVADIA, employee concerned raised an industrial dispute against the State Bank of Saurashtra against the alleged illegal termination of his service by the bank. Said dispute is not referred to for adjudication by the appropriate Government,**

respondent No.2 on the ground that the employee/applicant has not submitted any documentary evidence to show that he has completed 240 days continuous service during the calendar year, hence, there is no merit. This order was passed by respondent No.2 in exercise of the powers under section 12(5) of the Industrial Disputes Act, 1947 ("the ID Act, 1947" for short).

Learned advocate Mr. Supehia submits that the decision taken by respondent No.2 amounts to deciding the merits of the matter. Mr. Supehia further submitted that the respondent No.2 has no jurisdiction or power to examine merits of the matter or to adjudicate industrial dispute raised by concerned workman. He further submits that such powers are with the labour courts/industrial tribunals while exercising powers under section 10(1) of the ID Act, 1947. In support of his submissions, learned advocate Mr. I.S. Supehia

has placed reliance on the decision of the Hon'ble Apex Court in case of TELCO CONVOY DRIVERS MAZDOOR SANGH AND ANOTHER V. STATE OF BIHAR AND OTHERS reported in AIR 1989 SC 1565

On the other hand, learned advocate Mr. Sameer Dave appearing for respondent NO. 2 has submitted that the respondent NO.2 is entitled to form his prima facie opinion and in absence of documentary evidence, decision which has been taken by respondent no.2 is legal and valid. He also submits that forming of prima facie opinion does not amount to deciding merits of matter or adjudicating the matter and, therefore, order passed by respondent no.2 is legal and valid and does not call for any interference of this court.

Learned advocate Mr. Bhatt appearing for respondent no.1 has submitted that the workman has not produced any documentary evidence to satisfy respondent no.2 that he has completed 240

days continuous service, therefore, respondent no.2 was right in passing the order in question, therefore, no interference is warranted. Except the submissions recorded herein above, no other submissions were made either by Mr. Dave on behalf of respondent no.2 or by Mr. Bhatt on behalf of respondent no.1. No decisions were cited by them before this court in support of their submissions.

I have considered the submissions made by the learned advocates for the parties. An industrial dispute was raised by the petitioner against termination of his service by the bank. Respondent NO.2 has to see whether the dispute is existing between the parties or not. If the dispute is existing between the employer and employee, then, further inquiry or scrutiny of the dispute is not within the jurisdiction of respondent no.2. Decision dated 15th December, 2005 is a clear case of adjudication of the

dispute because in absence of documentary evidence, case of petitioner has not been believed by respondent no. 2 that he has completed 240 days continuous service in a calender year. The observation made by respondent no.2 in his decision dated 15.12.2005 that ' there is no merit' also suggests that he has examined merits of the matter amounting to adjudication of the matter. In TELCO CONVOY DRIVERS MAZDOOR SANGH AND ANOTHER V. STATE OF BIHAR AND OTHERS reported in AIR 1989 SC 1565, the apex court has observed that the reference of an industrial disputes is an administrative function of the appropriate Government and the Government, while considering question whether reference should be made or not, cannot delve into merits of dispute and determine the lis itself. In paragraph 13, 14, 15 and 16 of said decision, Hon'ble Apex Court observed as under:

> “13. Attractive though the contention is, we regret, we are unable to accept the

same. It is now well settled that, while exercising power under Section 10(1) of the Act, the function of the appropriate Government is an administrative function and not a judicial or quasi judicial function, and that in performing this administrative function the Government cannot delve into the merits of the dispute and take upon itself the determination of the lis, which would certainly be in excess of the power conferred on it by Section 10 of the Act. See Ram Avtar Sharma v. State of Haryana, (1985) 3 SCR 686 : (AIR 1985 SC 915) ; M.P. Irrigation Karamchari Sangh v. State of M.P., (1985) 2 SCR 1019 : (AIR 1985 SC 860) ; Shambu Nath Goyal v. Bank of Baroda, Jullundur, (1978) 2 SCR 793: (AIR 1978 SC 1088).

14. Applying the principle laid down by this Court in the above decisions, there can be no doubt that the Government was not justified in deciding the dispute. Where, as in, the instant case, the dispute is whether the persons raising the dispute are workmen or not, the same cannot be decided by the Government in

exercise of its administrative function under Section 10(1) of the Act. As has been held in M.P. Irrigation Karamchari Sangh's case (supra), there may be exceptionl cases in which the State Government may, on a proper examination of the demand, come to a conclusion that the demands are either perverse or frivolous and do not merit a reference. Further, the Government should be very slow to attempt an examination of the demand with a view to declining reference and Courts will always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of the valid disputes, and that to allow the Government to do so would be to render Section 10 and Section 12(5) of the Act nugatory.

15. We are, therefore, of the view that the State Government, which is the appropriate Government, was not justified in adjudicating the dispute, namely, whether the convoy drivers are workmen or employees of TELCO or not and, accordingly, the impugned orders of the Deputy Labour Commissioner acting on behalf of the Government and that of the

Government itself cannot be sustained.

16. It has been already stated that we had given one more chance to the Government to reconsider the matter and the Government after reconsideration has come to the same conclusion that the convoy drivers are not workmen of TELCO thereby adjudicating the dispute itself. After having considered the facts and circumstances of the case and having given our best consideration in the matter, we are of the view that the dispute should be adjudicated by the Industrial Tribunal and, as the Government has persistently declined to make a reference, under Section 10(1) of the Act, we think we should direct the Government to make such a reference. In several instances this Court had to direct the Government to make a reference under Section 10(1) when the Government had declined to make such a reference and this Court was of the view that such a reference should have been made. See Sankari Cement Alai Thozhiladar Munnetra Sangam v. Govt. of Tamilnadu, (1983) 1 Lab LJ 460; Ram Avtar Sharma v. State of Haryana, (1985) 3 SCR 686 : (AIR 1985 SC

915); M. P. Irrigation Karamchari Sangh v. State of M. P., (1985) 2 SCR 1019: (AIR 1985 SC 860); Nirmal Singh v. State of Punjab, (1984) 2 Lab LJ 396 : (AIR 1984 SC 1619).”

Considering the observations made by the Hon'ble Apex Court in aforesaid decision, refusal to make reference on the ground that “the applicant has not submitted any documentary evidence that he has completed 240 days continuous service during a calendar year, hence, there is no merit” clearly amounts to determining the lis itself. Respondent No.2 refused to refer the dispute for adjudication on the ground that the workman is not able to satisfy respondent no.2 about completion of 240 days in a calendar year. It is not necessary for workman to satisfy respondent no.2 about completion of 240 days continuous service in a calendar year. Appropriate Government has to see only whether the dispute is existing or not. If the dispute is existing between the employer and employee, then, it cannot refuse to make the reference and it shall have to refer the matter for adjudication under section 10(1) of the ID Act, 1947. Therefore, according to my

opinion, order of respondent no.2 dated 15.12.2005 is beyond the jurisdiction of the appropriate Government, deciding the dispute itself while declining the reference to the industrial tribunal, therefore, said order is required to be quashed and set aside.

In result, order passed by appropriate Government respondent No.2 dated 15.12.2005 is quashed with a direction to reconsider the matter in view of the decision of apex court as referred to above and decide matter within three months from the date of receipt of copy of this order. Rule is made absolute accordingly. No order as to costs.

(H.K. Rathod, J.)

Vyas